

January 28, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Reference No.: 05-0046

Mr. Charles L. Johnson
Johnson Electric & Phone Systems
1102 Kingsbury
Belle Fourche, SD 57717

Dear Mr. Johnson:

This is in response to the appeal you filed on behalf of Johnson Electric & Phone Systems (Johnson Electric & Phone Systems). We have carefully reviewed the material from the Wyoming Department of Transportation (WYDOT) and have concluded that the denial of Johnson Electric & Phone Systems' certification as an eligible Disadvantaged Business Enterprise (DBE) under criteria set forth in 49 CFR Part 26 ("the Regulation") is justifiable.

Your appeal is denied based upon a determination that you, the disadvantaged owner of the company failed to cooperate with the recipient by failing to provide the requested information, Affidavit of No Change and supportive documentation, after numerous attempts by WYDOT.

The specific reasons for the denial of your appeal include the following:

The Regulation provides that applicant DBE firms shall cooperate with recipients by providing all requested documentation necessary to render a determination as to the firm's eligibility for DBE status. The record evidence reveals that WYDOT mailed the "Annual No Change Affidavit" to your firm on March 10, 2004. The letter stated: "REMINDER: Anyone who fails to provide their No Change Affidavit in a timely manner `will be deemed to have failed to cooperate' according to the DBE regulations, which leads to a denial of continuing certification." On May 6, 2004, WYDOT sent you a facsimile informing you that it had not received the requested information. The facsimile also requested that you call the office and advise them of the status of the report. On July 9, 2004, WYDOT sent you a CERTIFIED LETTER RETURNED RECEIPT informing you that your Annual Update had not been received. On August 26, 2004, WYDOT sent another CERTIFIED LETTER RETURNED RECEIPT informing you of its intent to decertify the firm for failure to provide the requested information. The letter also stated that "49 CFR Part 27.73(c) states `DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT

requests) for information relevant to the certification process. Failure and refusal to provide such information is a ground for a denial or removal of certification. The letter was returned to WYDOT by the U. S. Postal Service unclaimed after three attempts to deliver the letter. By CERTIFIED LETTER RETURNED RECEIPT WYDOT, again informed you of the many attempts it made to contact you for the requested information as well as numerous telephone calls. WYDOT also informed you that your firm had been decertified for failure to cooperate.

Based on the above findings, we have determined that Johnson Electric & Phone Systems does not meet the requirements of the Department's Regulation 49 CFR Part 26.109(c) which states, in part, as follows:

“All participants in the Department’s DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g. with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of nonresponsibility for future contracts and/or suspension and debarment).”

In summary, the information provided cumulatively supports a conclusion that Johnson Electric & Phone Systems does not meet the criteria as required for DBE certification under 49 CFR Parts 23 and 26. The company is, therefore, ineligible to participate as a DBE on WYDOT's Federal financially-assisted projects. This determination is administratively final as of the date of this letter.

Sincerely,

Joseph E. Austin, Chief
External Policy & Program Development Division
Departmental Office of Civil Rights

cc: WYDOT

